

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

BOARD OF TRUSTEES OF THE CEMENT
MASONS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA et al.,

No. C 10-03344 LB

Plaintiffs,

**ORDER TO SHOW CAUSE AND
SETTING FURTHER CASE
MANAGEMENT CONFERENCE**

v.

C AND C CONCRETE, INC., et al.,

Defendants.

On July 29, 2010, Plaintiffs – the trustees of employee benefits plans for masons and other covered employees in the construction industry – filed a complaint against Defendants C and C Concrete, Inc. (“C and C Concrete”) and Jose R. Herrera, Jr. (collectively, “Defendants”), for failing to pay employee fringe benefits and make monthly reports in violation of the parties’ collective bargaining agreement, the trust agreements, and the Employee Retirement Income Security Act (“ERISA”). *See* Complaint, ECF No. 1 at 1-2, ¶ 1.¹

Defendants were represented by attorney Scott Woodall. The court subsequently granted Mr. Woodall’s motion to withdraw. *See* Order Granting Defendants’ Counsel’s Motion to Withdraw,

¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 ECF No. 65 at 1. In the order, the court noted that “corporations may not appear in federal court
2 except through counsel,” *see* N.D. Cal. Civil Local Rule 3-9(b), and ordered C and C Concrete to
3 file a substitution of counsel by June 29, 2012. *Id.* at 3. It also ordered Mr. Herrera to file either a
4 notice of his intention to proceed *pro se* or a substitution of counsel by June 29, 2012. *Id.* Neither C
5 and C Concrete nor Mr. Herrera filed anything.

6 On July 31, 2012, and at Plaintiffs’ request, the court dismissed Mr. Herrera from the case based
7 on his bankruptcy discharge. *See* Notice of Discharge and Order, ECF No. 69.

8 The court previously ordered C & C Concrete to appear in court on August 2, 2012, at 11:00
9 a.m., to show cause why it failed to file a substitution of counsel. Order to Show Cause, ECF No. 66
10 at 2. It also ordered C & C Concrete to file a written response to the Order to Show Cause by July
11 26, 2012. *Id.* C & C Concrete did not file a response or appear in court as ordered on August 2,
12 2012. Plaintiffs appeared through counsel

13 Plaintiffs thus have asked the court to strike Defendant C & C Concrete’s Answer to the First
14 Amended Complaint, thus allowing Plaintiffs to proceed in default against C & C Concrete. *See*
15 Plaintiffs’ Case Management Conference Statement, ECF No. 67 at 3.

16 Accordingly, no later than September 20, 2012 at 11 a.m., Defendant C & C Concrete shall show
17 cause why its answer to the First Amended Complaint should not be stricken. If C & C Concrete’s
18 answer is stricken, Plaintiffs then will be permitted to apply for entry of default judgment and
19 default judgment against it.

20 Although C & C Concrete may not appear except through counsel, for the limited purpose of
21 responding to this order to show cause, C & C Concrete may submit the declaration of an authorized
22 representative setting forth any efforts it has made to obtain counsel, and any reasons it may have
23 that its answer should not be stricken. That must be filed by September 13, 2012. In the event that
24 counsel for C & C Concrete enters an appearance on or before September 20, 2012, this order to
25 show cause will be discharged automatically.

26 Pursuant to the order permitting Mr. Woodall’s withdrawal and requiring him to continue to
27 serve on Defendants all papers in this case, service of this order on Mr. Woodall shall constitute
28 service on C & C Concrete, and Mr. Woodall shall make all reasonable efforts to ensure that C & C

Concrete receives actual notice of this order as promptly as possible. *See* Order, ECF No. 65 at 3 (under circumstances of this case, particularly with regard to C & C Concrete, which cannot appear except through counsel, Mr. Woodall must serve on Defendants all papers until a substitution of counsel is filed).

The court sets a further hearing for September 20, 2012, at 11 a.m.

IT IS SO ORDERED.

Dated: August 2, 2012



LAUREL BEELER
United States Magistrate Judge